Justice stated that it had always been the practice for Magistrates to allow bail to a convicted person unless the Magistrate had reasons for not allowing it. "The usual reason" he said, "for not allowing bail is the expectation that the appellant will abscond." It is clear the learned Chief Justice was not saying that this was the only reason for refusing bail and the judgment leaves it open to Magistrates to have regard to other considerations in deciding whether or not to grant bail to a convicted person pending appeal. This is made plain in the later case of *In re Kwan Wah Yit*[1] where Mr. Justice Spenser Wilkinson declined to follow the earlier decisions of Mr. Justice Fisher and in a lucid and persuasive judgment suggested that the considerations which should guide Magistrates in deciding whether to grant or refuse bail pending the hearing of an appeal were the gravity or otherwise of the offence; the length of the term of imprisonment in comparison with the length of time which is likely to elapse before the appeal is heard; whether there are difficult points of law involved; whether the convicted person has previous convictions; the possibility of his becoming involved in similar or other offences whilst at liberty; and whether the security imposed will ensure his attendance before the appellate Court.

I respectfully agree with the views expressed by Mr. Justice Spenser Wilkinson in that case but I would add that the considerations enumerated by him, which I regard as amplifying and not conflicting with the judgment of the Chief Justice in *R. v. Tan Tee*[3], should not be regarded as an exhaustive list. It is clear, for instance, that if an accused has pleaded guilty that fact must be considered by the Magistrate when exercising his jurisdiction and doubtless other matters, depending upon the circumstances of individual cases, will require consideration from time to time. The jurisdiction is discretionary and it would be wrong to attempt to lay down an exhaustive definition of the considerations which a Magistrate must have in mind when exercising it. Moreover, as in all cases where the jurisdiction is of a discretionary nature, the High Court will be slow to interfere unless it appears that the Magistrate, in arriving at his decision, has acted on some wrong principle. That was certainly not so in the present case. The charge and the facts were fully explained to the accused by an able and experienced interpreter and the learned Magistrate was quite satisfied that he fully understood the charge before pleading guilty. I am not surprised that the learned Magistrate was unimpressed when, a few hours later, counsel made an application for permission to withdraw the plea on the ground that his client had not understood the charge and therefore refused the application. In my opinion the Magistrate's decision to refuse bail in this case was fully justified and there are no grounds whatever for interfering with it. The motion is accordingly dismissed.

Motion dismissed.

Solicitors: *Christopher & Francis.*

SUHAIME BIN HAJI SERAT v. REG.

[C. C. A. (Whyatt C.J., Knight and Tan Ah Tah JJ.) December 5, 1956]

[Singapore — Criminal Appeal No. 35 of 1956]

Criminal Trial — Questions put by trial Judge to accused who makes an unsworn statement from the dock.

In this case the appellant who was charged with murder, elected at the close of the prosecution case, to make an unsworn statement. At the end of his statement the learned Judge put certain questions to him. On the appeal, it was argued that the learned Judge was wrong in putting the questions.

Held: (1) an accused person who makes an unsworn statement should not be questioned by the trial Judge except for the purpose of clearing up ambiguities; (2) in this case the questions put went further than mere clarification and actually elicited important facts and admissions which would not otherwise have been before the jury and moreover these matters were referred to again in the summing-up of the learned Judge; (3) it was impossible to say in these circumstances that the questions did not have the effect of prejudicing the appellant and therefore the conviction must be set aside.

COURT OF CRIMINAL APPEAL.

L. Rayner for the appellant.

T. A. Mahony (Crown Counsel) for the respondent.

The judgment of the Court was delivered by:—

Tan Ah Tah J.: — The appellant was convicted on the 6th September 1956 of the murder of one Nenek binte Hashim and was sentenced to death. He now appeals from that conviction.

The only point of substance in this appeal arises out of certain questions put to the appellant by the learned trial Judge after the appellant had made a statement from the dock. At the close of the case for the prosecution, when the appellant was called upon to enter on his defence, he elected to make an unsworn statement. He then proceeded to make a lengthy statement in the course of which he gave an account of his movements during the relevant period and a description of certain events which, according to him, occurred after he had been arrested and at the end of his statement the learned Judge put certain questions to him.

Counsel for the prosecution agreed that an accused person who makes an unsworn statement should not be questioned by the trial Judge except for the purpose of clearing up ambiguities but maintained that the questions which were put to the appellant in this case were merely by way of clarification of certain matters mentioned in his statement. In our opinion the questions went further than clarification and actually elicited important facts and admissions which would not otherwise have been before the jury. Moreover these matters were referred to again in the summing-up and it seems impossible to say in these circumstances that this did not have the effect of prejudicing the appellant.

We are of the opinion therefore that the objection taken by counsel for the appellant in regard to this matter is justified. It is clear, however, that there was in this case evidence upon which the jury might reasonably have convicted if there had been no departure from the proper practice and accordingly we have directed that there should be a new trial.

New trial ordered.

In re A TAX-PAYER

[C. A. (Mathew C.J., Whyatt C.J. (S) and Rigby J.) October 20, 1956]

[Penang — F.M. Civil Appeal No. 5 of 1956]

Income Tax Ordinance, 1947, s. 31(3), (5) & (7) — "Source of income" — "Trade, business, profession, vocation or employment" — Barrister taking employment as assistant Advocate and Solicitor — Whether income from "carrying on an employment" or from "carrying on a profession" — Whether person on becoming partner permanently ceased to carry on employment and commenced to exercise a profession.

Practice — Misnomer of party in Notice of Appeal — Application to amend.

This was an appeal from the decision of Spenser Wilkinson J. reported at p. 94, *ante*, where it was held that the taxpayer did not cease to carry on an employment within the meaning of subsection (5) of section 31 of the Income Tax Ordinance when he ceased to be an employee in a firm of Advocates and Solicitors and became a partner in the firm, and consequently he could not be re-assessed under the provisions of that section.

The issue raised by the appeal was whether the taxpayer permanently ceased to carry on an employment and commenced to exercise a profession when he became a partner as from January 1, 1954, so as to bring himself within the provisions of the relative subsections of section 31 of the Income Tax Ordinance.

Held: on a proper construction of subsection (5) of section 31 of the Income Tax Ordinance the taxpayer permanently ceased to carry on an employment when he ceased to be an assistant in the firm.

The next question raised in the appeal was from which of the five sources of income: "trade, business, profession, vocation or employment", was the taxpayer receiving income whilst he was working as an assistant?

Held: although the taxpayer was exercising his profession when he was serving as an assistant, he was not receiving professional fees; those were paid to the firm and he was paid a monthly salary, therefore, the salary paid to him whilst serving as an employee was received from "carrying on an employment".

Cases referred to:—

(1) *The Assunta* (1902) P. 150.

(2) *Davies v. Braithwaite* (1931) 2 K.B. 628.

COURT OF APPEAL.

F. G. Cooke (Federal Counsel) for the appellant.

F. G. Pooley for the respondent.

The facts appear sufficiently from the judgment of Whyatt C.J. (S.) which was read in open Court by the Ag. Senior Asst. Registrar, Penang.

Whyatt C.J. (S.) : — This is an appeal from a decision of Mr. Justice Spenser Wilkinson in which he held, affirming a decision of the Board of Review, that the taxpayer did not cease to carry on an employment within the meaning of sub-section (5) of section 31 of the Income Tax Ordinance 1947 when he ceased to be an employee in a firm of advocates and solicitors and became a partner in the firm, and consequently he could not be re-assessed under the provisions of that section.

The facts are not in dispute and may be briefly summarised as follows. In January 1950 the taxpayer was called to the Bar in England and in July of the same year he took up an appointment as an assistant in a firm of advocates and solicitors carrying on business in the Federation. Under the terms of his agreement with the firm, the taxpayer was to be employed for a term of three years at a monthly salary and to be